(Bhagirath & ors. Vs. Gyandutt & Anr.)
S.B. CIVIL REVISION PETITION No. 20/2006.

(Gyandutt Vs. Bhagirath & ors.)
SB CIVIL MISC. APPEAL NO. 213/99.

Date of order : 27.07.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr Ajay Vyas, for the petition in revision petition.
Mr MS Purohit, for appellant in the appeal.
Mr Manish Shishodia, for respondents in both cases.

Heard the learned counsel for the parties.

At the request of learned counsel for the parties, SB Civil Revision Pet. No. 20/2006 and SB Civil Misc. Appeal No. 213/99 both are heard together and decide by this common order.

It appears from the facts of the case that trial Court decided the suit of plaintiff against the defendant on 10th September, 1991. Regular first appeal was preferred against the judgment and decree of the trial Court wherein the first appellate Court framed four additional issues and in stead of remitting the issues to the trial Court for decision thereon, the first appellate Court set aside the judgment and decree of the trial Court and remanded the suit itself to the trial Court for deciding afresh.

The appellant's contention is that there was no reason for setting aside judgment and decree of the trial Court merely because the first appellate Court was of the opinion that some more issues should have been framed by the trial Court. It is submitted that the finding recorded by the trial Court are not vitiated or affected by framing of new issues. It is also

submitted that proper procedure was to remit the suit under O.41 R.25 CPC.

It appears from the order of this Court admitting the appeal itself that this fact was taken note of by this Court on 18th October, 2002 and this Court directed the trial Court to decide the newly framed issues and record findings thereon and also ordered that the trial Court shall not pass a fresh judgment on whole of the suit as directed by the first appellate Court.

After the order dated 18.10.2002, the learned trial Court gave decision on newly framed issues by order dated 17.12.2005. The order dated 17.12.2005 has been challenged by the defendants by preferring revision petition No. 20/2006 whereas basic order of remand is under challenge in Misc. Appeal No. 213/99.

The order of the first appellate Court dated 4.3.99 under challenge in SB Civil Misc. Appeal No. 213/99 is per se illegal and contrary to provisions of O.41 R.25 CPC. When the first appellate Court reached to the conclusion that new issues are required to be framed then those issues could have been referred to the trial Court for decision keeping the file of appeal before the appellate Court without setting aside the judgment and decree of the trial Court.

In view of the above, SB Civil Misc. Appeal No. 213/99 deserves to be allowed, hence allowed. The order of first appellate Court dated 4.3.99 setting aside the judgment and

decree of the trial Court is set aside. The issues framed by the first appellate Court which were required to be decided by the learned trial Court, by now those issues have been decided, therefore, the order of the appellate Court dated 4.3.99 is treated as order under O.41 R.25 CPC. The findings recorded by the trial Court on issues framed by the first appellate Court be sent to first appellate Court by the trial Court. The trial Court shall decide the appeal on merits.

Since the issues have been decided by the trial Court after the matter was remitted to the learned trial Court for deciding the issues, therefore, the petitioner in Revision Petition No. 20/2006 can challenge the findings on the issues recorded by the trial Court before the first appellate Court, therefore, there is no reason to entertain the revision petition against the order of the trial Court dated 17.12.2005 deciding the four newly framed issues; and revision petition, therefore, is dismissed with liberty to the petitioner to raise grounds in the regular first appeal.

Both the parties shall remain present before the first appellate Court on 28th August, 2006. The first appellate Court may try to decide the appeal expeditiously.

(PRAKASH TATIA), J.

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